

Ward et al.

S/N: 10/707,483

ELECTION

Applicant elects, with traverse, what the Examiner has characterized as "Embodiment I," disclosed in paragraph 42. Though Applicant maintains that the restriction is deficient, Applicant believes claims 1-13 read on "Embodiment I."

REMARKS

The Examiner has identified four embodiments of the claimed invention as follows: Embodiment I, disclosed in paragraph 42; Embodiment II, disclosed in paragraph 43; Embodiment III, disclosed in paragraph 44; and Embodiment IV, disclosed in paragraph 45. The Examiner stated that these Embodiments are "patentably distinct species of the claimed invention." Office Action, May 3, 2005, p. 2.

The four paragraphs cited by the Examiner as disclosing "Embodiments" of the present invention are found in the Detailed Description of the Preferred Embodiment section of the Specification, each Embodiment allegedly a separate species. However, even a cursory comparison of the cited paragraphs to the four independent claims of the present Application quickly elucidates that the language of each paragraph is substantially identical to that of one of the four independent claims. More specifically, paragraph 42 (Embodiment I) corresponds to claim 1, paragraph 43 (Embodiment II) corresponds to claim 14, paragraph 44 (Embodiment III) corresponds to claim 19, and paragraph 45 (Embodiment IV) corresponds to claim 26. Thus, the Examiner has effectively restricted claims to species and has not identified actual embodiments restricted to species. Section 806.04(e) of the MPEP is very clear in stating that "[c]laims are never species.... Species are always the specifically different embodiments." (Emphasis in original). Therefore, it appears that the present restriction attempts to circumvent this mandate by restricting between paragraphs of the Application which are paragraph-form duplications of the independent claims. Such a manner of restriction is improper, unsustainable, and must be withdrawn.

In addition, the Examiner has not clearly identified the "species" and has not stated any characteristics which distinguish between these "species." See MPEP §809.02(a) (the Examiner must "[c]learly identify each... of the disclosed species to which claims are restricted. The species are preferably identified as... figures... or... examples") (Emphasis added and in original). An inspection of the cited claims, beyond mere preamblic language, reveals that the purported

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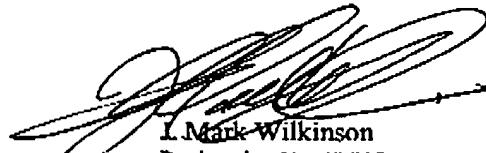
"species" are substantially interrelated. Thus, the Examiner could not provide a precise identification of the "species" or explain any distinguishable characteristics as between the cited claims. This failure to identify distinguishable characteristics indicates that the restriction required by the Examiner cannot be substantively supported.

In summary, the present restriction is improper since it effectively restricts claims and not embodiments, and since the Examiner has not properly identified the "species." Therefore, restriction should not be required in the present invention, and Applicant respectfully requests rejoinder of all claims, reading on each "Embodiment."

Additionally, claim 3 has been amended to correct an error in dependency.

The Examiner is invited to call the undersigned to discuss this Election or any other matters regarding this application to further prosecution.

Respectfully submitted,



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